

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SALVADOR SEGOVIA, JR.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
vs.)	
)	Case No. 4:24-CV-00736
KFC U.S. PROPERTIES, INC. and)	
DELECT FOODS, INC.,)	
)	
Defendants.)	

COMPLAINT

COMES NOW, ERIK GARCIA, by and through the undersigned counsel, and files this, his Complaint against Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”) and the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (“ADAAG”). In support thereof, Plaintiff respectfully shows this Court as follows:

JURISDICTION

1. This Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff’s claims pursuant to 42 U.S.C. § 12181 *et seq.*, based upon Defendants’ KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., failure to remove physical barriers to access and violations of Title III of the ADA.

PARTIES

2. Plaintiff, SALVADOR SEGOVIA, JR. (hereinafter “Plaintiff”) is, and has been at all times relevant to the instant matter, a natural person residing in Houston, Texas (Harris County).

3. Plaintiff is disabled as defined by the ADA.

4. Plaintiff is required to traverse in a wheelchair and is substantially limited in performing one or more major life activities, including but not limited to: walking and standing.

5. Plaintiff uses a wheelchair for mobility purposes.

6. In addition to being a customer of the public accommodation on the Property, Plaintiff is also an independent advocate for the rights of similarly situated disabled persons and is a “tester” for the purpose of enforcing Plaintiff’s civil rights, monitoring, determining and ensuring whether places of public accommodation are in compliance with the ADA. Her motivation to return to a location, in part, stems from a desire to utilize ADA litigation to make Plaintiff’s community more accessible for Plaintiff and others; and pledges to do whatever is necessary to demonstrate the plausibility of Plaintiff returning to the Property once the barriers to access identified in this Complaint are removed in order to strengthen the already existing standing to confer jurisdiction upon this Court so an injunction can be issued correcting the numerous ADA violations on this property. (“Advocacy Purposes”).

7. Defendant, KFC U.S. PROPERTIES, INC. (hereinafter “KFC U.S. PROPERTIES, INC.”) is a Delaware company that transacts business in the State of Texas and within this judicial district.

8. Defendant, KFC U.S. PROPERTIES, INC., may be properly served with process via its Registered Agent for service, to wit: c/o C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201.

9. Defendant, DELECT FOODS, INC. (hereinafter “DELECT FOODS, INC.”), is a Texas company that transacts business in the State of Texas and within this judicial district.

10. Defendant, DELECT FOODS, INC., may be properly served with process via its Registered Agent for service, to wit: c/o Kamal Singh, Registered Agent, 10331 Joshua Creek Ct., Cypress, TX 77433.

FACTUAL ALLEGATIONS

11. On or about August 27, 2023, Plaintiff was a customer at “KFC,” a business located at 8787 E. Tidwell Road, Houston, TX 77028 referenced herein as the “KFC.” Attached is a receipt documenting Plaintiff’s purchase. *See* Exhibit 1. Also attached is a photograph documenting Plaintiff’s visit to the Property. *See* Exhibit 2.

12. In January of 2024, Plaintiff drove by this KFC and saw the barriers to access were still present and despite his desire to return to the KFC as a customer, he was dissuaded from doing so because of the barriers to access.

13. Defendant, KFC U.S. PROPERTIES, INC., is the owner or co-owner of the real property and improvements that KFC is situated upon and that is the subject of this action, referenced herein as the “Property.”

14. Defendant, DELECT FOODS, INC. is the operator of the real property and improvements that KFC is situated upon and that is the subject of this action, referenced herein as the “Property.”

15. Plaintiff lives 7 miles from KFC and the Property.

16. Plaintiff’s access to the business(es) located at 8787 E. Tidwell Road, Houston, TX 77028, Harris County Property Appraiser’s parcel identification number 0440240000734 (“the Property”), and/or full and equal enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein were denied and/or limited because of his disabilities, and he will be denied and/or limited in the future unless and until

Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., are compelled to remove the physical barriers to access and correct the ADA violations that exist at the Property, including those set forth in this Complaint.

17. Plaintiff has visited KFC and the Property twice before as a customer and advocate for the disabled. Plaintiff intends to revisit KFC and the Property after the barriers to access detailed in this Complaint are removed and KFC and the Property are accessible again. The purpose of the revisit is to be a return customer, to determine if and when KFC and the Property are made accessible and to maintain standing for this lawsuit for Advocacy Purposes.

18. Plaintiff intends on revisiting KFC and the Property to purchase goods, food and/or services as a return customer living in the near vicinity as well as for Advocacy Purposes but does not intend to re-expose himself to the ongoing barriers to access and engage in a futile gesture of visiting the public accommodation known to Plaintiff to have numerous and continuing barriers to access.

19. Plaintiff travelled to KFC and the Property as a customer twice before as a customer and as an independent advocate for the disabled, encountered and/or was made aware of the barriers to access at KFC and the Property that are detailed in this Complaint, engaged or was dissuaded from engaging those barriers, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access present at the Property.

20. Although Plaintiff may not have personally encountered each and every barrier to access identified in Plaintiff's Complaint, Plaintiff became aware of all identified barriers prior to filing the Complaint and because Plaintiff intends on revisiting the Property as a customer and advocate for the disabled within six months or sooner after the barriers to access are removed, it

is likely that despite not actually encountering a particular barrier to access on one visit, Plaintiff may encounter a different barrier to access identified in the Complaint in a subsequent visit as, for example, one accessible parking space may not be available and she would need to use an alternative accessible parking space in the future on her subsequent visit. As such, all barriers to access identified in the Complaint must be removed in order to ensure Plaintiff will not be exposed to barriers to access and legally protected injury.

21. Plaintiff's inability to fully access the Property and the stores in a safe manner and in a manner which inhibits the free and equal enjoyment of the goods and services offered at the Property, both now and into the foreseeable future, constitutes an injury in fact as recognized by Congress and is historically viewed by Federal Courts as an injury in fact.

COUNT I
VIOLATIONS OF THE ADA AND ADAAG

22. On July 26, 1990, Congress enacted the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.*

23. Congress found, among other things, that:

- (i) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (ii) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (iii) discrimination against individuals with disabilities persists in such critical areas as employment, housing public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (iv) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory

effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser service, programs, activities, benefits, jobs, or other opportunities; and

- (v) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

42 U.S.C. § 12101(a)(1) - (3), (5) and (9).

24. Congress explicitly stated that the purpose of the ADA was to:

- (i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (ii) provide a clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and

* * * * *

- (iv) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12101(b)(1)(2) and (4).

25. The congressional legislation provided places of public accommodation one and a half years from the enactment of the ADA to implement its requirements.

26. The effective date of Title III of the ADA was January 26, 1992 (or January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

27. KFC is a public accommodation and service establishment.

28. The Property is a public accommodation and service establishment.

29. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

30. Public accommodations were required to conform to these regulations by January 26, 1992 (or by January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

31. KFC must be, but is not, in compliance with the ADA and ADAAG.

32. The Property must be, but is not, in compliance with the ADA and ADAAG.

33. Plaintiff has attempted to, and has to the extent possible, accessed KFC and the Property in his capacity as a customer of KFC and the Property and as an independent advocate for the disabled, but could not fully do so because of his disabilities resulting from the physical barriers to access, dangerous conditions and ADA violations that exist at KFC and the Property that preclude and/or limit his access to KFC and the Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

34. Plaintiff intends to visit KFC and the Property again as a customer and as an independent advocate for the disabled, in order to utilize all of the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at the Property, but will be unable to fully do so because of his disability and the physical barriers to access, dangerous conditions and ADA violations that exist at KFC and the Property that preclude and/or limit his access to KFC and the Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

35. Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., have discriminated against Plaintiff (and others with disabilities) by denying his access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of KFC and the Property, as prohibited by, and by failing to remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

36. Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., will continue to discriminate against Plaintiff and others with disabilities unless and until Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., are compelled to remove all physical barriers that exist at the Property, including those specifically set forth herein, and make KFC and the Property accessible to and usable by Plaintiff and other persons with disabilities.

37. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced and/or observed and/or was made aware of prior to filing this lawsuit that precluded and/or potentially limited Plaintiff's access to KFC and the Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of KFC and the Property include, but are not limited to:

ACCESSIBLE ELEMENTS:

- i. The ground surfaces of the accessible space have vertical rises in excess of $\frac{1}{4}$ (one quarter) inch in height, are not stable or slip resistant, have broken or unstable surfaces or otherwise fail to comply with Sections 502.4, 302 and 303 of the 2010 ADAAG standards. This barrier to access would make it dangerous and difficult for Plaintiff to access the units of the Property.
- ii. Due to a failure to enact a policy of proper grounds maintenance, there is sand in the accessible parking space. As a result of the sand, the ground surfaces of

the accessible space have vertical rises in excess of $\frac{1}{4}$ (one quarter) inch in height, are not stable or slip resistant, have broken or unstable surfaces or otherwise fail to comply with Sections 502.4, 302 and 303 of the 2010 ADAAG standards. This barrier to access would make it dangerous and difficult for Plaintiff to access the units of the Property.

- iii. Due to the positioning of the accessible parking space sign and a lack of an adequate policy of maintenance, it is nearly impossible to read. As a result, the accessible parking space is missing a properly positioned identification sign in violation of Section 502.6 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff to locate an accessible parking space.
- iv. The bottom edge of the sign identifying the accessible parking space is at a height below 60 inches from the floor in violation of Section 502.6 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff to locate an accessible parking space.
- v. There are vertical rises in excess of $\frac{1}{4}$ inch along the accessible route leading from the accessible parking space to the accessible entrance, in violation of Section 303.2 of the 2010 ADAAG standards. This barrier to access would make it dangerous and difficult for Plaintiff to access public features of the Property as vertical rise in excess of $\frac{1}{4}$ inch may cause Plaintiff's wheelchair to snag on the vertical rise and tip over.
- vi. Due to the presence of a 5-inch vertical rise, the Property lacks an accessible route from the sidewalk to the accessible entrance in violation of Section

206.2.1 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff to utilize public transportation to access the public accommodations located on the Property.

- vii. The walking surfaces of the accessible route leading from the public sidewalk have a slope in excess of 1:20 in violation of Section 403.3 of the 2010 ADAAG standards. This barrier to access would make it dangerous and difficult for Plaintiff to access the units of the Property. As the accessible route is in excess of 1:20, it is considered an accessible ramp, moreover, it has a total rise greater than six (6) inches yet does not have handrails in compliance with Section 505 of the 2010 ADAAG standards, this is a violation of Section 405.8 of the 2010 ADAAG Standards. This barrier to access would make it difficult for Plaintiff to access the units of the Property as ramps are often more difficult for disabled individuals to traverse and require handrails on both sides so that the disabled individual can use the handrail to assist them up the sloped surface.
- viii. Defendants fail to adhere to a policy, practice and procedure to ensure that all facilities are readily accessible to and usable by disabled individuals.

RESTROOMS

- ix. The restroom lacks signage in compliance with Sections 216.8 and 703 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff and/or any disabled individual to locate accessible restroom facilities.
- x. The actionable mechanism of the paper towel dispenser in the restroom is located outside the maximum prescribed vertical reach range of 48 inches

above the finished floor as set forth in Section 308.2.1 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff and/or any disabled individual to reach the actionable mechanism of the paper towel dispenser as individuals in wheelchairs are seated and have significantly less reach range than individuals who stand up.

- xi. The height of the bottom edge of the reflective surface of the mirror in the bathroom is above the 40-inch maximum height permitted by Section 603.3 of the 2010 ADAAG standards. This barrier to access would make it difficult for the Plaintiff and/or any disabled individual to properly utilize the mirror in the restroom since Plaintiff is sitting in a wheelchair and is lower than a person standing up.
- xii. The height of the sink exceeds the 34" maximum height from the finished floor in violation of Section 606.3 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff and/or any disabled individual to utilize the restroom facilities.
- xiii. The lavatories and/or sinks in the restrooms have exposed pipes and surfaces and are not insulated or configured to protect against contact in violation of Section 606.5 of the 2010 ADAAG standards. This barrier to access would make it difficult for Plaintiff and/or any disabled individual to safely utilize the sink as the pipes underneath the sink typically have sharp surfaces and/or hot pipes, and since individuals in wheelchairs use a sink while seated, their legs are particularly vulnerable to these threats.

- xiv. Defendants have a policy of placing the toilet paper dispenser on the side grab bar of the accessible toilet so that the grab bar no longer complies with the 1 1/2-inch spacing requirement set forth in Section 609.3 of the 2010 ADAAG Standards. This barrier to access would make it difficult for Plaintiff and other individuals with disabilities to utilize the accessible toilet safely as the grab bars are blocked and/or impeded by the objects placed on or about the grab bars by Defendants.
 - xv. The restrooms have grab bars adjacent to the commode which are not in compliance with Section 604.5 of the 2010 ADAAG standards as the rear bar is not 36 inches in length. This barrier to access would make it difficult for Plaintiff and/or any disabled individual to safely transfer from the wheelchair to the toilet and back to the wheelchair.
 - xvi. The restrooms have grab bars adjacent to the commode which are not in compliance with Section 604.5.2 of the 2010 ADAAG standards as the rear bar does not properly extend at least 24 inches from the centerline of the toilet. This barrier to access would make it difficult for Plaintiff and/or any disabled individual to safely transfer from the wheelchair to the toilet and back to the wheelchair.
38. The violations enumerated above may not be a complete list of the barriers, conditions or violations encountered by Plaintiff and/or which exist at the Property.
39. Plaintiff requires an inspection of KFC and the Property in order to determine all of the discriminatory conditions present at KFC and the Property in violation of the ADA.

40. The removal of the physical barriers, dangerous conditions and ADA violations alleged herein is readily achievable and can be accomplished and carried out without significant difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

41. All of the violations alleged herein are readily achievable to modify to bring KFC and the Property into compliance with the ADA.

42. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at KFC and the Property is readily achievable because the nature and cost of the modifications are relatively low.

43. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at KFC and the Property is readily achievable because Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., has the financial resources to make the necessary modifications as Defendants operate a KFC restaurant, and the parent company for KFC is Yum! Brands. In 2023, Yum! Brands had a revenue of over \$7 billion.

44. The removal of the physical barriers and dangerous conditions present at the Property is also readily achievable because Defendants have available to her a \$5,000.00 tax credit and up to a \$15,000.00 tax deduction from the IRS for spending money on accessibility modifications.

45. Upon information and good faith belief, KFC and the Property have been altered since 2010.

46. In instances where the 2010 ADAAG standards do not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can be modified to comply with the 1991 ADAAG standards.

47. Plaintiff is without adequate remedy at law, is suffering irreparable harm, and reasonably anticipates that he will continue to suffer irreparable harm unless and until Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., are required to remove the physical barriers, dangerous conditions and ADA violations that exist at KFC and the Property, including those alleged herein.

48. Plaintiff's requested relief serves the public interest.

49. The benefit to Plaintiff and the public of the relief outweighs any resulting detriment to Defendants.

50. Plaintiff's counsel is entitled to recover its reasonable attorney's fees and costs of litigation from Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., pursuant to 42 U.S.C. §§ 12188 and 12205.

51. Pursuant to 42 U.S.C. § 12188(a), this Court is provided authority to grant injunctive relief to Plaintiff, including the issuance of an Order directing Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., to modify KFC and the Property to the extent required by the ADA.

WHEREFORE, Plaintiff prays as follows:

- (a) That the Court find Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., in violation of the ADA and ADAAG;
- (b) That the Court issue a permanent injunction enjoining Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., from continuing their discriminatory practices;
- (c) That the Court issue an Order requiring Defendants, KFC U.S. PROPERTIES, INC. and DELECT FOODS, INC., to (i) remove the physical barriers to access

and (ii) alter KFC and the Property to make it readily accessible to and useable by individuals with disabilities to the extent required by the ADA;

- (d) That the Court award Plaintiff his reasonable attorneys' fees, litigation expenses and costs; and
- (e) That the Court grant such further relief as deemed just and equitable in light of the circumstances.

Dated: February 29, 2024.

Respectfully submitted,

Law Offices of
THE SCHAPIRO LAW GROUP, P.L.

/s/ Douglas S. Schapiro

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